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September 26, 2024

VIA ECF

Magistrate Judge Joseph A. Marutollo
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Courtroom N324
Brooklyn, NY 11201

**RE: IN RE PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT
ANTITRUST LITIGATION
Case No. 05-MD-1720 (MKB) (JAM)
Betz & Baril response to order to show cause**

Dear Judge Marutollo:

I represent Betz & Baril, and this letter addresses the issues raised in the Court's September 7, 2024 Order to Show Cause (ECF document number 9408), which was modified to extend the filing deadline for this letter to today.

Betz & Baril should not be permanently barred from any settlement-related services in this action, nor should the Court Cancel Betz & Baril's Contracts with its Class Members.

First, Betz & Baril fully respects, appreciates, and understands the gravamen of protecting class members and would be class members and conducts itself accordingly, and has immediately remedied any previous issues, as acknowledged by class counsel, and as set forth in greater detail below.

Second, the work that Betz & Baril has performed in connection with its marketing efforts is "commendable," in the words of an actual class member that emailed class counsel. See copy of email attached to this letter as Exhibit A. Specially, this class member states, in the attached email, in no uncertain terms: "Also, funny enough the other firm **Betz & Baril** out of my hometown in Knoxville were the ones that told me I could file on my own! Proceeding a discussion with them prompted me to get back with Milberg to withdraw my claim with them. As a single claimant, I just wanted to take a moment and **commend** both of these groups for being helpful to me. **I think this is just such a big endeavor that there is a lot of miscommunications going on, but I don't see it as sinister amongst these other law groups.**" (Emphasis added.)

Third, all class members are protected and the actual engagement letters or contracts that Betz & Baril has with its class members conspicuously contains the required disclaimers, to wit:

By signing this agreement, you agree to pay us 33% of the proceeds received from the class action settlement. THERE WILL BE NO COMPENSATION DUE TO US IF YOU DO NOT RECEIVE ANY PROCEEDS.

We are a private company and are not affiliated with the claims administrator, class counsel or any other parties associated with the class action settlement. You are not required to use us to file a claim but have voluntarily chosen to do so.

Claim forms are being delivered and are available online beginning December 1, 2023. Class members need not sign up for a third-party service in order to participate in any monetary relief and no-cost assistance will be provided from the Class Administrator and Class Counsel during the claims-filing period. For further information please visit paymentcardsettlement.com

We do not guarantee that you will receive any proceeds. If a dispute arises between us this agreement will be construed in accordance with the laws of Tennessee and your consent to the venue Knox County, Tennessee. The prevailing party will be entitled to its expenses and attorney's fees.

See copy of standard engagement letter agreement with class members attached as Exhibit B to this letter.

Therefore, even if the marketing issues were not remedied (and they were, as set forth below), the class members and would be class members are nevertheless protected through the clear and unambiguous disclaimer language in the engagement letter agreement.

Fourth, Betz & Baril has undertaken extensive corrective efforts, as follows:

- On or about June 23, 2019 Business Refunds of America took down its website, paymentcardhelp.com. On or about June 30, 2024, Business Refunds of America took down its Facebook Page. All telemarketing efforts performed by outside sales agents ceased on or about June 15, 2024. Lastly, Business Refunds of America has provided to class counsel a list of the businesses that Business Refunds of America has signed up. On July 3, 2024, Business Refunds of America worked with class counsel to send a letter—at its own expense—to its class members and inform them of false or misleading information on its website and corrected any misinformation that any of its clients relied upon in formulating the basis to sign with Business Refunds of America. Business Refunds of America will also allow all its class members the opportunity to rescind its contract because of any false or misleading information, at any time. On or about July 9, 2024, Business Refunds of America's Twitter page was disabled.

- On May 15, 2024, Jason Baril of Betz & Baril spoke with Mark Phillips at The Private Millionaires Club LLC concerning a solicitation that raised issues, and it was immediately removed. Jason Baril notified class counsel and issued an apology via email. Betz & Baril terminated its working relationship with The Private Millionaires Club LLC shortly after this incident.
- On July 15, 2024, Jason Baril took immediate action where class counsel raised an issue with a LinkedIn post from Betz & Baril. On July 16, 2024, the LinkedIn post was removed in its entirety. Jason Baril notified class counsel and issued an apology via email.
- July 17, 2024, within 24 hours of being notified by class counsel, Betz & Baril removed all offending videos and inappropriate materials brought to its attention. Jason Baril also agreed to cease the submission of any new taxpayer identification numbers to give class counsel space to sort out the marketing issues. Letters were sent by Betz & Baril, ClickFunds, and AddTraffic to the Court pledging to remove inappropriate materials. Jason Baril also drafted a letter to send to 1700 clients that may have signed up via the posts by AddTraffic and ClickFunds, stating that the marketing materials may contain false or misleading information, and that these have been pulled from the internet. Jason Baril explicitly offers a complete withdrawal of services with no questions asked or strings attached, and promotes the official-court website as a destination for claimants to file on their own. Jason Baril also ceased all work with ClickFunds and AddTraffic as a result of this incident. Class counsel approved the list and letter. Betz & Baril notified class counsel once all letters were sent and issued an apology via email.
- On August 22, 2024, Betz & Baril sent an email to conflicts@paymentcardsettlement.com, bulkfiler@paymentcardsettlement.com, class counsel, and a class claimant, withdrawing Betz & Baril's representation where a class member complained, and explicitly stated that no fees are owed and that the class member may file independently and on its own. Betz & Baril also contacted the lead generators in question and asked them to send in emails explaining the mistake and reviewing that their practices are in compliance with the court rules. Those emails were forwarded to class counsel. Betz & Baril reassured class counsel that all outgoing marketing has ceased. (PLEASE NOTE: Claimants often speak to multiple different third party filers. Betz & Baril nor the class counsel can confirm by name that the representative they spoke with was associated with our firm. They could have signed up with Betz & Baril then explored other options and thus been given misinformation elsewhere.)
- In response to class counsel's latest issue raised (September 4, 2024), and what appears to be the subject of the order to show cause, Betz & Baril did not immediately recognize the purportedly offending company names. Betz & Baril then later recognized that the companies were lead generators or network marketing companies. Betz & Baril had terminated its relationship with Lencred

the week of August 5, 2024; however, the website in question was inadvertently overlooked. Within 24 hours, the website was taken down. Within one week, the offending video was removed. The list attached to this letter as Exhibit C is a list of the class members signed up through these efforts. Attached to this letter as Exhibit D is a communication that, with the Court's approval, Betz & Baril would propose sending to this list.

- Betz & Baril will honor any request from any class member at any time to cancel their contract for any reason or no reason (without compensation).

Fifth, as acknowledged by the praising class member above, this class action is daunting and there are a lot of moving parts, and there is unavoidable slippage just by the sheer volume of class members and the marketing efforts to those members. For context, over the course of the last 17 years, Betz & Baril has used lead generation companies for various practice areas such as criminal defense, personal injury, workers compensation, bankruptcy, and mass torts. Betz & Baril has never had any marketing compliance issues with these third-party companies until this case.

As I am sure the Court would agree, this case is a unique case, and many of these lead generation companies had not worked on this specific case until engaging with Betz & Baril. Due to this, Betz & Baril believes it led to some marketing rule violations in this specific case. Due to the May 2024 violation and the July 2024 violations, Betz & Baril made a decision early August 2024 to cease working with all external lead generation and networking companies, even the ones that had no violations. With Lencred and Certainty Management, Betz & Baril ended its marketing relationship the week of August 5, 2024. However, an oversight on their part left a landing page and a video up that was later removed.

The only marketing Betz & Baril is doing now is internal marketing. Betz & Baril has not had a violation from internal marketing since 2019.

Sixth, as stated with approval by class counsel in its letter supporting the order to show cause, the standard that the Court applies in evaluating what sanction, if any, it should apply to the aforementioned conduct is if Betz & Baril acted "knowingly," or "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Not only is the record devoid of any such conduct, curiously, there is not a single allegation that Betz & Baril acted "knowingly," or "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons," only that, in class counsel's view — and which an actual class member actively vigorously disputes, as aforesaid — Betz & Baril's conduct was somehow "egregious" in the context of the aforesaid conduct.

For the foregoing reasons, Betz & Baril should be permitted to participate and be compensated for all settlement related activities in this case in connection with its class members, and the Court should not order the cancellation of the contracts between Betz & Baril and the class members for claims related services. For these same reasons, the Court should not order that Betz & Baril notify its class members of any cancellation, but as aforesaid and with the Court's

permission, Betz & Baril would and will send the corrective letter to the limited pool of class members most recently signed up with lead generation company Certainty.

As directed by the Court, attached to this letter as Exhibit E is Betz & Baril's master list of class members that it signed up through its marketing efforts.

In conclusion, in light of the relatively minor violations (when considered in light of the sheer number of class members signed up through Betz & Baril, namely 9,296, as of today), the immediate corrective actions taken, the disclaimer language in the Betz & Baril engagement letter agreement, and the fact that Betz & Baril will honor any request from any class member at any time to cancel their contract for any reason or no reason (without compensation), Betz & Baril should be permitted to continue acquiring new class members, participate in settlement related activities, and be justly compensated therefor.

Respectfully submitted,

/s/James J. DeCristofaro
James J. DeCristofaro